

**STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
OLYMPIA, WASHINGTON**

**REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ # 07-RFQQ-402**

PROJECT TITLE
Website Business Links Sales and Program Manager

EXPECTED TIME PERIOD FOR CONTRACT
July 1, 2007 through June 30, 2009
(With possible extension for two additional one-year periods beyond
June 30, 2009 at the sole discretion of the Department.)

BIDDER ELIGIBILITY
This procurement is open to those Bidders who satisfy the minimum qualifications
stated herein and are available for work in Washington State.

TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1	<i>Purpose and Background</i>	<i>1</i>
1.2	<i>Mandatory Requirements</i>	<i>1</i>
1.3	<i>Funding.....</i>	<i>1</i>
1.4	<i>Bonding.....</i>	<i>2</i>
1.5	<i>Period of Performance.....</i>	<i>2</i>
2.	GENERAL INFORMATION	2
2.1	<i>Definitions</i>	<i>2</i>
2.2	<i>ADA.....</i>	<i>3</i>
2.3	<i>Rights of Ownership and Confidentiality.....</i>	<i>3</i>
3.	PROCUREMENT RULES AND PROCEDURES.....	3
3.1	<i>RFQQ Coordinator.....</i>	<i>3</i>
3.2	<i>Conditions.....</i>	<i>3</i>
3.3	<i>Estimated Schedule of Procurement Activities.....</i>	<i>4</i>
3.4	<i>Proprietary Information/Public Disclosure</i>	<i>4</i>
3.5	<i>Bidder's Questions and Department's Responses</i>	<i>4</i>
3.6	<i>Revisions to the RFQQ.....</i>	<i>5</i>
3.7	<i>Minority & Women-Owned Business Participation (MWBE)</i>	<i>5</i>
3.8	<i>Acceptance Period.....</i>	<i>5</i>
3.9	<i>Most Favorable Terms.....</i>	<i>5</i>
3.10	<i>Costs to Propose</i>	<i>6</i>
3.11	<i>Obligation to Contract.....</i>	<i>6</i>
3.12	<i>Rejection of Proposals.....</i>	<i>6</i>
3.13	<i>Commitment of Funds</i>	<i>6</i>
3.14	<i>Proposal Due Date and Delivery Location.....</i>	<i>6</i>
3.15	<i>Proposal Evaluation.....</i>	<i>7</i>
3.16	<i>Waive Minor Administrative Irregularities</i>	<i>7</i>
4.	INSTRUCTIONS FOR PROPOSAL PREPARATION AND SUBMITTAL	7
4.1	<i>Proposal Organization</i>	<i>7</i>
4.2	<i>Proposal Format</i>	<i>8</i>
4.3	<i>Letter of Submittal (Mandatory)</i>	<i>8</i>
5.	QUALIFICATIONS SECTION.....	9
5.1	<i>Business Information (Mandatory).....</i>	<i>9</i>
5.2	<i>Experience (Scored) - 60 Points Maximum.....</i>	<i>10</i>
5.3	<i>Staffing (Scored) - 40 Points Maximum.....</i>	<i>11</i>
5.4	<i>OMWBE Certification (Optional and Not Scored).....</i>	<i>11</i>
6.	QUOTATIONS SECTION	11
6.1	<i>Identification of Costs (Scored) - 50 Points Maximum</i>	<i>11</i>
7.	PROPOSAL EVALUATION.....	12
7.1	<i>Evaluation Procedure</i>	<i>12</i>
7.2	<i>Evaluation Weighting and Scoring.....</i>	<i>12</i>
7.3	<i>Oral Presentations</i>	<i>12</i>
8.	NOTIFICATION TO BIDDERS.....	13
8.1	<i>Debriefing of Unsuccessful Bidders.....</i>	<i>13</i>
8.2	<i>Protest Procedure.....</i>	<i>13</i>
9.	RFQQ EXHIBITS	15
	<i>Exhibit A - Certifications and Assurances.....</i>	<i>15</i>
	<i>Exhibit B - Scope of Work.....</i>	<i>16</i>
	<i>Exhibit C - Draft Contract.....</i>	<i>18</i>

1. INTRODUCTION

1.1 Purpose and Background

The purpose of this RFQQ is to solicit proposals from qualified firms to provide Business Links Sales and Program Management Services as described in Exhibit B (Scope of Work) for the Tourism Office of the International Trade and Economic Development Division of the Department of Community, Trade and Economic Development (Department).

The Tourism Office website, www.experiencewa.com, provides an opportunity for all tourism-related businesses to have a free listing consisting of the business name, address, phone number and that it is also integrated into the interactive map system. In addition, the Business Links program provides tourism-related businesses the opportunity to purchase enhanced listing or information visibility. Paid links are offered on a sliding fee basis and at a minimum include a photo, website link, e-mail link and brief copy along with integration in the interactive map system.

This program allows consumers visiting the website to contact and purchase goods and services directly from businesses that are linked from experiencewa.com, and provides businesses the opportunity to connect with consumers in order to do business.

Procurement is expected to result in the award of one contract. This RFQQ is being conducted in compliance with the policies and procedures of the Office of Financial Management (OFM) as well as other applicable state laws and regulations.

1.2 Mandatory Requirements

The Bidder must be licensed to do business in the state of Washington and meet the following requirements:

- Have an office located in Washington State.
- At least five years of experience in managing a business sales program featuring online advertising.

1.3 Funding

The Contractor shall receive no direct compensation from the Department relative to the services provided by the Contractor as specified in Exhibit B (Scope of Work). The Contractor's sole source of revenue shall be obtained from the proceeds of the Business Links fees. The Department will be responsible for the costs for maintenance and any upgrade to www.experiencewa.com.

1.4 Bonding

Every officer, director, or employee who is authorized to act on behalf of a non-governmental Contractor or any Subcontractors for the purpose of receiving or depositing funds into program accounts, or issuing financial documents, checks, or other instruments of payment for program costs shall be bonded to provide protection against loss:

1. The amount of fidelity bonding coverage secured pursuant to this Contract shall be \$100,000 or the highest planned advance or reimbursement for this Contract period, whichever is lowest.
2. Subcontractor fidelity bonds shall provide coverage as noted above.
3. The Contractor shall provide, at the Department's request, copies of bonding and insurance instruments or certifications from the bond/insurance issuing agency. The copies or certifications shall show the bonding or insurance coverage, the designated beneficiary, who is covered, and the amounts."

1.5 Period of Performance

The period of performance of any contract(s) resulting from this RFQQ is scheduled to begin on or about July 1, 2007 and end on June 30, 2009. The Department reserves the option at its sole discretion to extend the contract for two additional one-year periods.

2. GENERAL INFORMATION

2.1 Definitions

Definitions for the purposes of this RFQQ include:

Department – The Department of Community, Trade and Economic Development is the Department of the state of Washington that is issuing this RFQQ.

Bidder – Individual or company submitting a proposal in order to attain a contract with the Department.

Contractor – Individual or company whose proposal has been accepted by the Department and is awarded a fully executed, written contract.

Proposal – A formal offer submitted in response to this solicitation.

Request for Qualifications and Quotations (RFQQ) – Formal procurement document in which services needed are identified, and firms are invited to provide their qualifications to provide the services and their monthly and/or hourly rates.

Subcontractor – Any person not in the employ of the Contractor; performing work which is the responsibility of the Contractor under a contract resulting from this RFQQ.

RFQQ Coordinator – Individual noted in Section 3.1 or any other designee.

2.2 ADA

The Department complies with the Americans with Disabilities Act (ADA). Bidders may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2.3 Rights of Ownership and Confidentiality

The Department shall own all business data entry software, materials, and reports, including the business links listing data and database produced in the performance of services rendered under contract from this procurement.

All data, programs or documentation encountered by the contractor in performance of services requested will be considered confidential, not to be copied, shared or transferred in any way without written permission of the CTED manager responsible for the request for services.

3. PROCUREMENT RULES AND PROCEDURES

3.1 RFQQ Coordinator

The RFQQ Coordinator is the sole point of contact in the Department for this procurement. The RFQQ will be posted at <http://www.cted.wa.gov/site/1026/default.aspx> for potential Bidders. All communication between the Bidder and the Department upon receipt of this RFQQ shall be with the RFQQ Coordinator as follows:

Name:	Betsy Gabel
Mailing Address:	CTED/EDD 128 – 10th Avenue SW PO Box 42525 Olympia, WA 98504
Phone Number:	360-725-4180
Email Address:	betsyg@cted.wa.gov

Any other communication will be considered unofficial and non-binding on the Department. Bidders are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Bidder.

3.2 Conditions

Proposals are invited and will be accepted subject to the following conditions and rights of the Department. The Contractor is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the entire proposal as non-responsive.

3.3 Estimated Schedule of Procurement Activities

Issue Request for Quotes and Qualifications	April 13,2007
Dates For Submission of Written Questions	April 27,2007
Date for Response to all Written Questions	May 4, 2007
RFQQ Proposals Due	May 18,2007
Evaluate RFQQ Proposals	May 21-25,2007
Bidders Notified of Oral Presentations	May 28, 2007
Finalist Oral Presentation Dates	June 4-8, 2007
Evaluation of Presentations	June 11-13 2007
Announce Apparent Successful Bidder	June 15, 2007
Negotiate Contract	June 18-June 29, 2007
Begin Contract Work	July 1, 2007

The Department reserves the right to revise the above schedule. Any such revision will be posted at <http://www.cted.wa.gov/site/1026/default.aspx> and Bidders are responsible for reviewing this website for any updates.

3.4 Proprietary Information/Public Disclosure

Materials submitted in response to this competitive procurement shall become the property of the Department.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the Assistant Director of the Department and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in RCW 42.56.010, "Public Records."

A charge will be made for copying and shipping, as outlined in RCW 42.56.120. No fee shall be charged for inspection of contract files, but forty-eight (48) hours notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

3.5 Bidder's Questions and Department's Responses

All questions and requests for clarifications pertaining to this RFQQ must be submitted in writing via email to the RFQQ Coordinator within the dates specified in Section 3.3 - Estimated Schedule of Procurement Activities. Questions received after the final date stated in the Procurement Schedule will not be answered in the Department's responses.

Department responses to all questions and requests for clarification received by the deadline date will be posted on May 4, 2007 at <http://www.cted.wa.gov/site/1026/default.aspx>.

3.6 Revisions to the RFQQ

The Department reserves the right to revise this RFQQ. In the event it becomes necessary to revise any part of this RFQQ, addenda will be posted at <http://www.cted.wa.gov/site/1026/default.aspx> and Bidders are responsible for reviewing this website for any updates.

The Department also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

If a conflict exists between the original RFQQ and the revised RFQQ, the document having the latest date shall have precedence. For this purpose the published Bidder's Questions and Department's Responses shall become part of this RFQQ.

3.7 Minority & Women-Owned Business Participation (MWBE)

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals are 10 percent for MBE and 4 percent for WBE for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360-753-9693 to obtain information on certified firms.

3.8 Acceptance Period

Proposals must provide 60 days for acceptance by the Department from the due date for receipt of proposals.

3.9 Most Favorable Terms

The Department reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Bidder can propose. The Department does reserve the right to contact a Bidder for clarification of its proposal.

The Bidder should be prepared to accept this RFQQ for incorporation into a contract resulting from this RFQQ. Contract negotiations may incorporate some or all of the Bidder's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the Department.

3.10 Costs to Propose

The Department will not be liable for any costs incurred by the Bidder in preparation of a proposal submitted in response to this RFQQ, in conducting a presentation, or any other activities related to responding to this RFQQ.

3.11 Obligation to Contract

This RFQQ does not obligate the state of Washington or the Department to contract for services specified herein.

3.12 Rejection of Proposals

The Department reserves the right, at its sole discretion, to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

3.13 Commitment of Funds

The Contractor shall receive no direct compensation from the Department relative to the services provided by the Contractor under any agreement resulting from this procurement.

3.14 Proposal Due Date and Delivery Location

All required sections of the proposal must be received by the RFQQ Coordinator not later than 12:00 Noon, Pacific Standard Time (PST) May 18, 2007. Proposals received after that time and date will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the Department and will not be returned.

Proposals must be delivered by email addressed to the RFQQ Coordinator, Betsy Gabel, at betsyg@cted.wa.gov. Neither the Department nor the RFQQ Coordinator assumes any responsibility for any problems with email delivery either within or outside the Department that would affect proposal delivery. Receipt of the proposal by the time and date specified in the RFQQ is the sole responsibility of the Bidder.

Proposals as delivered must include all parts and components in a format defined in the Instructions for Proposal Preparation, Section 4.0. Incomplete proposals will be rejected as non-responsive.

3.15 Proposal Evaluation

The Department will establish an evaluation team to review and score all responsive proposals received by the closing date. The evaluation process is as follows:

- Proposals will first be reviewed for compliance with the requirements and instructions set forth in this RFQQ.
- Proposals will then be reviewed by the RFQQ Coordinator for compliance with the mandatory requirements as described in Section 1.2 Mandatory Requirements, Section 4.3 Letter of Submittal, Section 5.1 Business Information, and that the Certification and Assurances Form, Exhibit A, is attached.
- Proposals that meet the mandatory requirements will be reviewed and scored by the Department's evaluation team, consisting of the Department and any other sources deemed necessary by the Department.
- The top scoring firms may be contacted to participate in an oral interview.
- If oral interviews are held, a decision of the award will be based solely on the oral interview.

3.16 Waive Minor Administrative Irregularities

The Department reserves the right, at its sole discretion, to waive minor Bidder administrative irregularities.

4. INSTRUCTIONS FOR PROPOSAL PREPARATION AND SUBMITTAL

4.1 Proposal Organization

Proposals must be submitted in three parts as follows:

1. Letter of Submittal and Certifications and Assurances Form (Exhibit A of this RFQQ)
2. Qualifications Section
3. Quotation Section.

4.2 Proposal Format

The Bidder's proposal, in its entirety, must be sent by email to Betsy Gabel, the RFQQ Coordinator in Olympia, Washington (betsyg@cted.wa.gov) no later than 12:00 Noon PST, Friday May 18, 2007. **The subject line of the email must read "Business Links RFQQ."** Bidders assume the risk of being able to deliver the proposal in described format by the deadline stated. The proposals must be submitted electronically in PDF Acrobat technology. All other supplemental documents, attachments and exhibits must also be delivered in electronic format utilizing PDF Acrobat technology. All formats should be in the standard 8-1/2 by 11 inch paper size. Be sure to include the Bidder company name, Bidder representative name, address, telephone number and email address at the beginning of the document. Do not send your documents in zip format.

4.3 Letter of Submittal (Mandatory)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Bidder to a contractual relationship.

The Letter of Submittal must be written on the Bidder's official letterhead. It must include the following:

- A. An itemization of all materials and attachments included in the email proposal in response to the RFQQ.
- B. A statement that the Bidder meets all mandatory requirements set forth in this RFQQ.
- C. A statement that the Bidder believes the proposal addresses all the requirements set forth in the Scope of Work.
- D. The Bidder's guarantee that the proposal as submitted, shall remain in full force and effect for a specified amount of time, which must be at least 90 days from the proposal due date as specified in the RFQQ.

5. QUALIFICATIONS SECTION

The Qualifications Section of the proposal must contain information that will demonstrate the Bidder's ability to accomplish the services as described in Exhibits B (Scope of Work).

The Qualifications response is to be submitted in two sections as follows: 1) Business Information; and 2) Experience and Staffing. The optional third section would include proof of certification for minority and women-owned businesses participating on the project.

Items in this section marked "mandatory" must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

5.1 Business Information (Mandatory)

- A. State the name of the company, address, phone number, fax number, email address, legal status of entity (ownership), and year entity was established as it now substantially exists.
- B. Provide the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington Department of Revenue.
- C. State the number of employees that constitute the firm's permanent staff. Name the firm's principals and their roles.
- D. If the firm/organization is located in more than one city, please list the others in which it operates.
- E. List the firm's principal online sales accounts, length of time that the firm has held each account. Indicate all new clients acquired over the last three years. Indicate all public (governmental) accounts acquired over the past three years.
- F. List the online sales clients the firm has lost in the past three years. Indicate all accounts lost that are travel or tourism-related or public agencies.
- G. Bidder must provide a comprehensive list of financial references. The Department may, at its discretion, contact each reference to ensure that the Bidder is financially solvent and responsible.
- H. Identify any Washington State employees or former Washington State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Bidder's organization. If following a review of this information, it is determined by the Department that a conflict of interest exists, the Bidder may be disqualified from further consideration for the award of a contract.

- I. If any member of the Bidder's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the DEPARTMENT previously or currently employed by, job title or position held, and separation date.
- J. If the Bidder has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Bidder's non-performance or poor performance and the issue of performance was either; (a) not litigated due to inaction on the part of the Bidder, or (b) litigated and such litigation determined that the Bidder was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the Bidder's position on the matter. The Department will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If the Bidder has experienced no such termination for default in the past five years, so indicate.

5.2 Experience (Scored) - 60 Points Maximum

- A. Describe the firm's experience in providing and managing an online sales program similar to that described in Exhibit B (Scope of Work.). List the number of years the firm has provided the services described. (15 points)
- B. Describe the marketing approach the firm would undertake to increase online sales to all tourism business categories. Identify the firm's promotional and sales strategies that would be implemented in order to influence new and repeat online business links sales. Include the firm's specific plan for print, online and other marketing collateral material. (15 points)
- C. Describe the firm's experience and knowledge of the state's tourism industry including the specific tourism business categories that the firm has targeted for an online sales program. (10 points)
- D. Describe any online data entry software tools the firm would propose developing at the firm's expense that would enhance business access to the free listing or paid links database. (5 points)
- E. Describe the firm's experience in working collaboratively with other organizations in developing an online sales program. Describe the firm's plan to integrate its sales activities with the web marketing activities of the Department and the Department's Contractor for Web development and maintenance services.(5 points)
- F. Describe the approach the firm recommends for providing the identification and free listing of all tourism-related businesses. (5 points)
- G. Describe the firm's experience with creating and maintaining databases. (5 points)

5.3 Staffing (Scored) - 40 Points Maximum

- A. Provide names and descriptions of those whom Bidder proposes to work on this contract, as well as the proposed project team structure, including any subcontractors and list the years of experience in providing services described in the RFQQ. List any subcontractors that will be included to complete the required services and describe their experience and the services each would provide. Also include the name of the lead contact for the contract. (20 points)
- B. List references: names, addresses, telephone numbers, and web address of all businesses for which work similar to that described in this RFQQ has been accomplished. CTED may at its sole discretion, contact these references. Bidder gives CTED permission to do so. (20 points)

5.4 OMWBE Certification (Optional and Not Scored)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

6. QUOTATIONS SECTION

6.1 Identification of Costs (Scored) - 50 Points Maximum

- A. Provide your proposed fee schedule and describe the range of business listings and links that would be included along with the fee for each. (20 points)
- B. Describe any revenue sharing plan you would offer to tourism industry associations (e.g. Washington Hotel and Lodging Association, Washington Restaurant Association, and Destination Marketing Organizations, etc). (15 points)
- C. Describe the revenue sharing plan you would offer to the Department. (15 points)

Bidders are required to collect and pay Washington State sales tax, if applicable.

The evaluation process is designed to award this procurement not necessarily to the Bidder of least cost, but rather to the Bidder whose proposal best meets the requirements of this RFQQ. Bidders are encouraged, however, to submit proposals that are consistent with state government efforts to conserve state resources.

7. PROPOSAL EVALUATION

7.1 Evaluation Procedure

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team to be designated by the Department, which will determine the ranking of the proposals.

The Department, at its sole discretion, may elect to select the top-scoring firm(s) as finalist(s) for an oral presentation.

7.2 Evaluation Weighting and Scoring

The following weighting and points will be assigned to the proposal for evaluation purposes:

Qualifications Section – 66%:	100 points
<i>Firm Experience</i>	<i>maximum 60 points</i>
<i>Staff Qualifications</i>	<i>maximum 40 points</i>
Quotation Section – 33%	50 points
Sub-Total	150 points
GRAND TOTAL	150 POINTS

7.3 Oral Presentations

The top-scoring firm(s) Bidder(s) may be contacted to schedule a date, time, and location for an oral presentation, should CTED choose, at its sole discretion, to include such oral interviews as part of this process. Commitments made by the Bidder at the oral interview, if any, will be considered binding.

Finalists will receive a set of questions to which they are expected to respond during the oral presentation. Finalists can also expect additional questions not provided in advance to be presented to them during their oral presentation. The oral presentations will be scored and upon evaluation of all oral presentations award(s) to one or more contractors will be made. The final decision of award will be based solely on the oral interview. The scores for Qualifications and Quotations will not be considered in making the final decision.

8. NOTIFICATION TO BIDDERS

Firms whose proposals have not been selected for further negotiation or award will be notified by email.

8.1 Debriefing of Unsuccessful Bidders

Upon request, a debriefing conference will be scheduled with an unsuccessful Bidder. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Bidder letter is emailed to the Bidder. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Bidder's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

8.2 Protest Procedure

This procedure is available to Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Bidder is allowed three (3) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Bidders protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Bidders under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFQQ Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or Department policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal; or 2) Department's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, the Department will hold a protest review. The Department Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Bidder that submitted a proposal, such Bidder will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the Department's action; or
- Find only technical or harmless errors in the Department's acquisition process and determine the Department to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the Department's options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If the Department determines that the protest is without merit, the Department will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

9. RFQQ EXHIBITS

Exhibit A - Certifications and Assurances

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt and the Department may accept it without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.
5. I/we understand that the Department will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Department, and I/we claim no proprietary right to the ideas, writings, items or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Bidder or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

Signature of Bidder_____

Title_____Date_____

Exhibit B - Scope of Work

1. Contractor shall manage an ongoing sales program to sell direct tourism business links on the consumer tourism website, www.experiencewa.com. The business links sales must be available to all tourism-related businesses throughout the state on a sliding fee basis, ranging from free listings to fees based on the level of visibility on the experiencewa.com website.
2. Contractor will be responsible for posting all links on the experiencewa.com website and for ongoing monitoring to eliminate any broken links and insure that link placement is appropriate. Contractor shall collect all fees and maintain ongoing, up-to-date database of all businesses participating in the program, including records of all free listings, new paid links and all paid links that are renewals. All financial transactions shall be the responsibility of the Contractor to manage, and any systems, whether web-based or paper, that are necessary to collect fees are also the responsibility of the Contractor to develop and maintain.
3. Contractor shall utilize the basic online data entry tool available from the tourism industry website, www.experiencewa.com/industry that allows businesses to enter the information for free listings or for paid links. The basic content tool software on the industry website shall be provided by the Department. Any content tool enhancements required by the Contractor shall be the financial responsibility of the Contractor unless it is determined by the Department to be a Department responsibility. Any software or programmatic additions or revisions to the tourism industry website content tool must be developed in accordance with the existing website standards and must be approved by the Department.
4. Contractor is responsible for free and paid listings and must have a plan, approved by the Department, for acquiring free listing information that will maximize the potential for listing accuracy. There are currently no state agencies that can provide lists of tourism-related businesses.
5. The advertising fees collected by the Contractor will cover all costs for posting, monitoring, and maintaining the tourism free and paid business links database and program. The Department's cost will be limited to the maintenance and, as necessary, the upgrading of the basic web-based content management tools necessary for the integration of the database information and links into the appropriate locations on the www.experiencewa.com website.
6. The Department must approve the business links fee schedule and the placement of links or other online advertising and reserves the right to review and approve all business links or free listings that are posted on www.experiencewa.com. The business links and free listing database will be wholly owned by the Department.
7. Contractor is responsible for costs for preparing and disseminating all marketing materials to increase business links sales. The Department will actively support all marketing efforts but is not expected to cover any costs.

8. In soliciting fees for business links on the www.experiencewa.com website, the Contractor and his/her employees or agents shall not hold himself/herself out as, or claim to be, an officer or employee of the Department. The Contractor shall provide the Department with a draft of all sales materials, printed or electronic, for Department approval prior to the dissemination of those materials.
9. The Contractor shall assume full responsibility for the accuracy of all free and paid business link information that is posted on www.experiencewa.com.

Exhibit C - Draft Contract

CONTRACT NO.

CONTRACT FOR PERSONAL SERVICES
BETWEEN
STATE OF WASHINGTON
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
AND

This Contract is made and entered into by and between the state of Washington, _____, hereinafter referred to as the "DEPARTMENT," and the below-named firm, hereinafter referred to as "CONTRACTOR."

Contractor Name

Address

City, State, Zip-Code

Phone

Fax

Email

Washington State UBI Number

Federal ID Number

PURPOSE

The purpose of this contract is to provide web marketing/consulting services for all websites within the International, Trade and Economic Development Division of the Department of Community Trade and Economic Development (DEPARTMENT) and other divisions within the DEPARTMENT as needed.

SCOPE OF WORK

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the DEPARTMENT and the CONTRACTOR, and specific obligations of both parties.
- B. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below

- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to [REDACTED], the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

The period of performance under this contract will be from [REDACTED], or date of execution, whichever is later, through [REDACTED].

OFM FILING REQUIREMENT

10-Day Filing

Under the provisions of Chapter 39.29 RCW, this personal service contract [*or amendment*] is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

COMPENSATION

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed [REDACTED] (\$ [REDACTED]). CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

EXPENSES

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the DEPARTMENT as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$ [REDACTED], which amount is included in the contract total above. Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates.

BILLING PROCEDURES AND PAYMENT

DEPARTMENT will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Contract Manager [*not more often than monthly.*]

The invoices shall describe and document, to the DEPARTMENT'S satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include reference to Contract No. [REDACTED]. If expenses are invoiced, provide a detailed breakdown of each type. Documentation for all outside services (those services not provided by staff or subcontractors) must accompany all invoices.

Payment shall be considered timely if made by the DEPARTMENT within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The DEPARTMENT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the DEPARTMENT.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Manager for CONTRACTOR:	Contract Manager for DEPARTMENT is:
Contract Mgr Name <input type="text"/>	Contract Mgr Name <input type="text"/>
Contractor Name <input type="text"/>	Department Name <input type="text"/>
Address <input type="text"/>	Address <input type="text"/>
City, State Zip Code <input type="text"/>	City, State Zip Code <input type="text"/>
Phone: (<input type="text"/>) <input type="text"/> Fax: (<input type="text"/>) <input type="text"/>	Phone: (<input type="text"/>) <input type="text"/> Fax: (<input type="text"/>) <input type="text"/>
Email address: <input type="text"/>	Email address: <input type="text"/>

INSURANCE – (NOTE: Include as applicable.)

The CONTRACTOR shall provide insurance coverage as set out in this section *[or as set forth in the Request for Proposals No.]*. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract. The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. **Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. **Automobile Liability.** In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insured's under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to DEPARTMENT within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

ASSURANCES

DEPARTMENT and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic contract instrument;
- Exhibit A – General Terms and Conditions;
- Exhibit B – Request for Proposals No. [REDACTED];
- Exhibit C – Contractor's Proposal dated [REDACTED]; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the DEPARTMENT'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of [] pages and [] attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the contract.

[CONTRACTOR'S NAME]

COMMUNITY, TRADE AND ECONOMIC
DEVELOPMENT

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

CONTRACT EXHIBIT A GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the agency of the State of Washington identified on the contract face sheet, any division, section, office, unit or other entity of the Agency, or any of the officers, employees, or other agents lawfully representing that Agency.
- B. "Contractor" shall mean the entity identified on the contract face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor.

2. ACCESS TO DATA –

If this contract is for personal services, in compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this Contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Contract shall be made by the Agency.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

6. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY –

If this contract is funded by federal funds, the Contractor certifies by signing this contract that to the best of its knowledge and belief that its principals:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and

Have not within a three-year period preceding the signing of this contract had one or more public transactions (Federal, State, or local) terminated for cause of default.

- A. Where the Contractor is unable to certify to any of the statements in this contract, the Contractor shall attach an explanation to this contract.
- B. The Contractor agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency.
- C. The Contractor further agrees by signing this contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.

- 1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.”

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Agency for assistance **in obtaining a copy of** these regulations.

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

“Confidential Information” as used in this section includes:

- A. All material provided to the Contractor by the Agency that is designated as “confidential” by the Agency;
- B. All material produced by the Contractor that is designated as “confidential” by the Agency; and
- C. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Agency or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Agency with its policies and procedures on confidentiality. The Agency may require changes to such policies and procedures as they apply to this Contract whenever the Agency reasonably determines that changes are necessary to prevent authorized disclosures. The Contractor shall make the changes within the time period specified by the Agency. Upon request, the Contractor shall immediately return to the Agency any Confidential Information that the Agency reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

The Contractor shall notify the Agency within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

9. COMPLIANCE WITH LAWS

All activity pursuant to this Contract shall be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

10. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Agency effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Agency with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

11. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

12. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of the Agency, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number, and;
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

13. DUPLICATE PAYMENT

The Agency shall not pay the Contractor, if the Contractor has charged, or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

14. ENTIRE AGREEMENT

This Contract including the attachments identified in the Contract Face Sheet represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

15. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (RCW 42.52) and any other applicable state or federal law related to ethics or conflicts of interest.

16. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

17. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, the Agency, all other agencies of State and all officers, agents and employees of the State, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officers, agents or employees.

18. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the State of Washington or the Agency. The Contractor will not hold itself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

19. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

20. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

21. NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

22. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the State of Washington or the Agency's name is mentioned, or language used from which the connection with the State of Washington's or the Agency's name may reasonably be inferred or implied, without the prior written consent of the Agency.

23. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws and/or the provisions of this contract, the Agency reserves the right to recapture funds in an amount to compensate the Agency for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Agency. In the alternative, the Agency may recapture such funds from payments due under this contract.

Such right of recapture shall exist for a period not to exceed six years following contract termination. In the event that the Agency is required to institute legal proceedings to enforce the recapture provision, the Agency shall be entitled to its costs thereof, including attorneys' fees.

24. RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

25. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

26. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

27. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Agency may terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

28. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

29. SITE SECURITY

While on Agency premises, Contractor, its agents, employees, or Subcontractors shall comply with the Agency's security policies and regulations.

30. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Agency.

If the Agency approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Agency in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Agency if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal responsibility and compliance with the applicable terms and conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Agency and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

31. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

32. TERMINATION FOR CAUSE / SUSPENSION

In event the Agency determines that the Contractor failed to comply with any term or condition of this Contract, the Agency may terminate the Contract upon written notice to the Contractor. Termination shall take effect on the date specified in the notice.

In the alternative, the Agency upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Agency may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Agency to terminate the Contract upon written notice to the Contractor.

"Termination For Cause" shall be deemed a "Termination For Convenience" when determined that the Contractor did not fail to comply with the terms of the Contract or when failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

33. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the Agency may, by 10 calendar day's written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Agency shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

34. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by the Agency, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the Agency all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of the Agency; and
- D. Preserve and transfer any materials, contract deliverables and/or Agency property in the Contractor's possession as directed by the Agency.

Upon termination of the Contract, the Agency shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. The Agency may withhold any amount due as the Agency reasonably determines is necessary to protect the Agency against potential loss or liability resulting from the termination. The Agency shall pay any withheld amount to the Contractor if the Agency later determines that loss or liability will not occur.

The rights and remedies of the Agency under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

35. TREATMENT OF ASSETS

Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved in writing by the Agency, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to recover the property or protect the property from further damage.

The Contractor shall surrender to the Agency all property of the Agency upon completion, termination or cancellation of this contract.

36. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.